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Dave Thier, Contributor
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Funnyjunk Lawyer Charles Carreon Isn't Afraid of The Oatmeal

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The story so far: Matt Inman, AKA The Oatmeal, complains about Funnyjunk.com using his comics without permission. Intellectual property lawyer Charles Carreon sends him a letter asking for $20,000 as recompense for this "defamation." Instead, Matt Inman sends him a letter explaining why he's not going to do that, raises more than $140,000 for charity, and draws a comic insinuating that Funnyjunk's collective mother would not be entirely unhappy about making love to a Kodiak bear. Charles Carreon finds himself at the center of an internet firestorm.

Attorney Charles Carreon (Photo credit: Wikipedia)

When I talked to Carreon last night, however, he didn't seem the least bit fazed by all the negative attention he's been getting throughout the internets, or even the more aggressive incursions onto his Twitter account or WordPress site. In fact, he seemed excited about this bizarre new world he had stumbled into. For him, the Funnyjunk stuff is old news – this is about himself, Matt Inman, and the great wide internet.

In his 20 years as a lawyer, he says, he's written hundreds of letters like the one he sent Inman, but the response to this one was unique.

> "So someone takes one of my letters and takes it apart. That doesn't mean you can just declare netwar,

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Instigating Attacks Against Him

Dave Thier
Contributor

encourage people to violate my trademark and violate my twitter name and associate me with incompetence with stupidity, and douchebaggery," he says. "And if that's where the world is going I will fight with every ounce of force in this 5'11 180 pound frame against it. I've got the energy, and I've got the time."

It's a bold notion, saying that you've got as much time and energy as the internet.

He compares Inman's charity campaign to when people would sell tickets to throw balls at women being accused of witches in a dunking tank. Money for charity is raised, of course, but the witches aren't in on it. He may have a very difficult time proving that Inman "instigated attacks," as he said on his website, but he's certain he can find some legal recourse for what's going on right now – "California code is just so long, but there's something in there about this," he says.

Carreon is mostly fascinated about plumbing the depths of internet rage, and he's diving in. He says he takes the time to respond to hate mail, but marvels at the extent of the language people use.

"What I see is a world that is transforming before my eyes, and I'm very fortunate to be at the forefront of a lot of technical development, and you can't learn anything being timid," he says.

"My hero is Cyrano de Bergerac, and he said that he'd rather have an enemy than kiss ass, just to sum it up," he continued. "I welcome the opportunity to confront legally the misuse of a new technology."

This bizarre saga may be just beginning.

Dave Thier
Contributor
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I'm a freelance writer whose work has appeared in The Atlantic, The New York Times, The New Republic, IGN.com, Wired and more. I cover social games, video games, technology and that whole gray area that happens when technology and consumers collide. Google

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another_reader 1 week ago

It appears Mr Carreon has just discovered the internet 10 years ago. It is amazing how out of touch he is, and his choice of posturing in this manner digging in for a client he took on who is clearly in the wrong. Props to him for sticking up for the client, although my condolences for what this will do for his career to lose so gloriously for a misguided cause.

Called-out comment

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TexasSwede 1 week ago

The interesting thing is that Charles Carreon himself is critical of how Youtube operates. He posted in 2010 on his blog about how Youtube profit from having users upload copyrighted content, and not policing it well enough. Basically the same as FunnyJunk does, except that Youtube actually have plenty of original content as well.

Of course, as that information was published on some sites, Charles Carreon quickly took down his blog. It is still cached by Google, though:
http://webcache.googleusercontent.com
/search?q=cache:z9UHSdTm6D4J:www.charlescarreon.com/notable-cyber-law-cases
/caveat-creator-dmca-google/2010/06/23

In case Charles Carreon try to get Google to delete that (for him very embarrassing) data from the cache, here is the content. It is quoted under "fair use", as critizism and for commenting.

————————————————————-

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June 23, 2010

All Google Needed Was An Effective Takedown System to Reach the Safe Harbor

In granting summary judgment against Viacom on the grounds that Google was a legitimate Online Service Provider with an effective takedown system, and therefore entitled to receive the benefit of the DMCA "Safe Harbor" under 17 USC 512(c), the District Court cites copious amounts of legislative history establishing that without the safe harbor, the Internet might not grow robustly. (Download PDF) Google's general knowledge that there was a whole lot of infringement happening on YouTube didn't mean that it was obligated to start screening for infringing content or hunting it down once it was posted, because their job is just to have an effective takedown system to remove content once the creator tells them it's infringing. The burden of discovering infringing content never shifts to the Online Service Provider, and it's always the copyright holder's job to find it and identify it by URL. The court said:

Mere knowledge of prevalence of such activity in general is not enough. That is consistent with an area of the law devoted to protection of distinctive individual works, not of libraries. To let knowledge of a generalized practice of infringement in the industry, or of a proclivity of users to post infringing materials, impose responsibility on service providers to discover which of their users' postings infringe a copyright would contravene the structure and operation of the DMCA.

YouTube Is DMCA-Friendly, Napster Was Not

The court also held that even though YouTube technology made it easy to infringe, that didn't make it like Grokster or Napster, because those were systems that were designed to foment piracy. This is an interesting distinction, because creating a video bazaar where everyone knows you can find stolen content doesn't seem that different from creating a file sharing system where everyone knows you can create stolen content, but it's different in one important way — Napster and Grokster never went around deleting content, and had no mechanism that would allow a copyright holder to locate where the content was and send a takedown notice. This really means that some technology is DMCA-friendly (YouTube-style video communities) and some is not.

Ad Revenue From Tainted Traffic Is Pure

The court rejected the argument that Google should lose the DMCA safe harbor because it was generating ad traffic by having a site that in general, contains a lot of infringing content. This part of the opinion isn't very satisfying. The court seems to be finessing the issue when it says:

The safe harbor requires that the service provider "not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity " § 512(c) (1) (B). The "right and ability to control" the activity requires knowledge of it, which must be item-specific.There may be arguments whether revenues from advertising, applied equally to space regardless of whether its contents are or are not infringing, are "directly attributable to" infringements, but in any

altogether. To say they have no "ability to control" infringing videos until they know that they are infringing is like saying I can't control my appetite until I know the caloric content of my food. If I were Viacom, not that I want to be Viacom, I would tell my lawyers to appeal on the grounds that the district judge distorted the meaning of the statute here. After all, the court admitted that Google was working the system:

From plaintiffs' submissions on the motions, a jury could find that the defendants not only were generally aware of, but welcomed, copyright-infringing material being placed on their website. Such material was attractive to users, whose increased usage enhanced defendants' income from advertisements displayed on certain pages of the website, with no discrimination between infringing and non-infringing content.

Let The Creator Beware

If Google can generate ad revenue by taking in every kind of content without distinction, and make money on the infringing attractions, then Google can "work the float," and always have enough infringing content to keep its blood pressure up at the expense of copyright holders. The only way that content owners can act proactively is by implementing digital "fingerinting technology" through the "Claim Your Content" system that Google uses as its only screening mechanism. Fingerprinting your content is not, however, cheap. So what this opinion seems to announce is a doctrine of "Caveat Creator," let the creator beware.

Will The Real Free Speech Provider Please Stand Up?

Please don't take me for a copyright hawk, but this seems like a ruling that benefits a company that has made a habit of turning other people's work into their payday, and is being encouraged to keep on doing it. Meanwhile, real free, nonprofit libraries that have no advertising revenue, are discouraged from putting the works in their archives on the Internet where scholars and researchers can use it for fair use purposes, because publishers do not respect the fair use protections of 17 USC 107 (the Library Exemption from copyright infringement liability). I am currently defending the American Buddha Online Library against a suit from Penguin, and although I won on jurisdictional grounds in New York District Court, Penguin appealed, and the Second Circuit court of appeals is now asking the New York State Appeals Court to take a look at the issues and see if something better can be worked out for Penguin by tweaking New York state law. I am doing this case pro bono, because I've been well acquainted with the director for many years, but few libraries have a handy intellectual property lawyer to handle their cases. So true freedom of speech on the Internet is getting suppressed by copyright lawsuits while Google gets to keep minting money by working the DMCA like a money pump. Nice work if you can get it.

Called-out comment

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Don Lindell 1 week ago

It's my opinion that Carreon thought the 20k would be an easy pick and did not anticipate the response from The Oatmeal. Which is strange because The Oatmeal responded in the same manner as two years ago and escalated the argument into the court of public opinion.

The court of public opinion abides in the hearts of its members.

Anticipating it's decisions is relatively straightforward if you understand the philosophy driving their behavior.

In this case, Carreon bluffed and lost.

The question is wether he truly intends to double down, a strategy that has it's own name: The Streisand Effect.

You can't beat the house, you can't fight city hall, don't poke the mask of the ol' Lone Ranger and you don't piss off the internet.

Called-out comment

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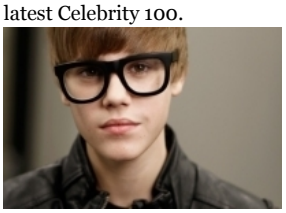

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